

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CARYN JENNINGS et al.,

Plaintiffs,

v.

USAA CASUALTY INSURANCE  
COMPANY et al.,

Defendants.

CASE NO. 3:23-cv-06171-DGE

ORDER ON MOTION TO AMEND  
CLASS CERTIFICATION  
DEADLINES (DKT. NO. 49)

Presently before the Court is Plaintiffs' motion to extend certain class certification deadlines. (Dkt. No. 49.) For the reasons set forth below, Plaintiffs' motion is GRANTED.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs initiated this case by filing a class action complaint in the Clark County Superior Court on November 16, 2023. (Dkt. No. 1-1.) On December 20, 2023, Defendants removed this case to federal court. (Dkt. No. 1.) On May 24, 2024, the Court issued a scheduling order setting certain deadlines in this case. (Dkt. No. 39.) Relevant to this motion, the Court set January 15, 2025 as the deadline to complete discovery relevant to class

1 certification and February 3, 2025 as the last day to file a motion for class certification. (*Id.*) On  
2 May 31, 2024, the Court entered a stipulated agreement regarding discovery of electronically  
3 stored information (“ESI”). (Dkt. No. 41.)

4 On July 1, 2024, the parties exchanged ESI disclosures. (Dkt. No. 50-1.) Defendants’  
5 ESI disclosure included the following statement:

6 This is one of several pending actions, in multiple states, in which  
7 individuals, represented by most of the Plaintiffs’ attorneys in this  
8 case, have challenged, on behalf of putative state-wide classes,  
9 USAA’s methods of adjusting of Personal Injury Protection (“PIP”) and Medical Payments (“MedPay”) claims, and in particular,  
10 USAA’s Medical Bill Audit (“MBA”) process. The allegations in  
11 those related cases are nearly identical to the allegations in this case.  
12 In the earliest filed of those cases, *Tomczak et al. v. USAA Cas. Ins. Co. et al.*, 5:21-cv-01564 (D. S.C.), USAA collected and produced  
13 voluminous documents, including ESI, concerning the MBA  
14 process (the “*Tomczak* Production”). The *Tomczak* Production  
15 comprises nearly all of the core documents relevant to the MBA  
16 process, and most of Defendants’ nonprivileged ESI that is relevant  
and proportional to the needs of this case.

17 Rather than duplicate the ESI collection, search, and review that  
18 resulted in the *Tomczak* Production, Defendants propose to produce  
19 in this case the *Tomczak* Production, with the exception of ESI and  
20 other documents and data that is specifically related only to the  
21 named plaintiffs in *Tomczak*, or specifically related only to South  
22 Carolina claims.

23 (*Id.* at 2–3.)

24 Defendants’ disclosure provides a “description of the data sources that were searched to  
produce documents in *Tomczak* and the parameters that were used to perform those searches.”

(*Id.* at 3.) Defendants provided the names of two custodians whose email accounts were  
searched using the search parameters described in the ESI disclosure. (*Id.*) Defendants also  
described collection of electronic files from three shared network locations “identified as most  
likely to contain information relevant to the issues in this case.” (*Id.*)

1 Plaintiffs were not satisfied with Defendants' ESI disclosure. On July 11, 2024, Plaintiffs  
2 sent Defendants a letter memorializing a meet and confer session held on July 2, 2024. (Dkt. No.  
3 50-2.) Plaintiffs argued Defendants did not identify all known custodians likely to have  
4 discoverable ESI, as required by the ESI agreement,<sup>1</sup> but instead "simply listed the custodians  
5 and search terms Defendants utilized in the *Tomczak* case." (*Id.* at 2.) Plaintiffs argued there  
6 were many other individuals likely to have discoverable ESI, including the individuals listed in  
7 the parties' initial disclosures. (*Id.*) Plaintiffs also questioned whether Defendants adequately  
8 identified potential data sources. (*Id.* at 3–4.)

9 On July 22, 2024, Defendants responded to Plaintiffs' letter. (Dkt. No. 50-3.)  
10 Defendants argued that this case is one of several "substantially identical actions" Plaintiffs'  
11 attorneys are litigating against Defendants concerning challenges to certain aspects of the MBA  
12 process. (*Id.* at 2.) Defendants asserted that, "[b]ut for a couple additional challenged 'reason  
13 codes' and details specific to the named Plaintiffs in this case," the allegations in those related  
14 cases "are the same as the allegations in this case." (*Id.*) Defendants claimed that they had  
15 already collected and produced numerous documents, including ESI, concerning the MBA  
16 process in connection with the *Tomczak* case, and that these materials constitute "nearly all of the  
17 core documents relevant to the MBA process, and most of Defendants' nonprivileged ESI that is  
18 relevant and proportional to the needs of this case." (*Id.*) Defendants stated their intention to  
19 retrieve and produce additional materials relevant to this case, and argued they disclosed all data  
20 sources "likely to contain non-duplicative, relevant information and documents that are  
21 proportional to the needs of this case." (*Id.* at 2–3.)

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23 <sup>1</sup> The ESI agreement provides that the parties shall disclose, within 30 days of the Court's entry  
24 of the agreement, "[t]he custodians most likely to have discoverable ESI in their possession,  
custody, or control." (Dkt. No. 41 at 2.)

1 On August 23, 2024, Plaintiffs sent Defendants a letter asserting the data sources,  
2 custodians, and search terms identified in Defendants' July 22, 2024 letter were "woefully  
3 inadequate." (Dkt. No. 50-4 at 2.) Plaintiffs stated the 28 search terms Defendants utilized in  
4 the *Tomczak* case were inadequate to retrieve all documents responsive to Plaintiffs' request for  
5 production, and proposed an additional 23 search terms. (*Id.* at 2–3.) Plaintiffs demanded  
6 Defendants search "the entirety" of the email accounts of the two custodians identified by  
7 Defendants in their ESI disclosure using Plaintiffs' proposed search terms. (*Id.* at 3.) Plaintiffs  
8 further demanded Defendants search the email accounts of an additional 34 custodians using the  
9 proposed search terms, and also demanded Defendants identify and search appropriate  
10 custodians in several USAA departments. (*Id.* at 3–4.)

11 On September 24, 2024, Defendants responded to Plaintiffs' proposals via email. (Dkt.  
12 No. 50-5.) Defendants reviewed Plaintiffs' proposal and ran a test, using the search terms  
13 proposed by Plaintiffs on the email accounts on two of the 34 individuals on Plaintiffs' list of  
14 additional custodians. (*Id.* at 2.) Defendants stated the search produced 22,427 documents for  
15 the first custodian and 27,463 documents for the second. (*Id.*) Defendants then pulled a random,  
16 statistically significant sample of those hits and reviewed the results for relevance, identifying  
17 only three relevant documents out of a random sample of 1,036 documents. (*Id.*) Defendants  
18 argued these results were "not surprising" because Plaintiffs' proposed custodians who have had  
19 "very little to do with the topics at issue in the litigation" and because Plaintiffs' proposed search  
20 terms "are facially overbroad and not tailored to return relevant content." (*Id.*)

21 On November 8, 2024, Defendants sent Plaintiffs a letter asserting Defendants had made  
22 "substantial progress toward a supplemental collection and production of ESI" and that Plaintiffs  
23 now had "the lion's share of responsive documents and data in this case." (Dkt. No. 50-6 at 2.)  
24

1 Defendants re-asserted their position that Plaintiffs’ list of 34 custodians was overbroad, given  
2 that many of these individuals “have little knowledge or information relevant to the issues in this  
3 case.” (*Id.*) Despite this, Defendants, “solely to avoid protracted and expensive discovery  
4 negotiations and disputes,” agreed to collect ESI from all the custodians identified by Plaintiffs, a  
5 process which Defendants had already begun and expected to complete “in the next several  
6 weeks.” (*Id.*) Defendants informed Plaintiffs that performing searches for 34 additional  
7 custodians using Plaintiffs’ proposed search terms would produce “roughly one million docs  
8 without families, and in the neighborhood of seven to eight million docs with families.” (*Id.* at  
9 3.) Given the volume of documents involved, Defendants proposed using Technology Assisted  
10 Review (“TAR”) to perform Plaintiffs’ proposed searches and attached a proposal for doing so.  
11 (*Id.* at 3–4.) Defendants advised Plaintiffs that, given the volume of ESI Defendants had been  
12 collecting, and had yet to collect in response to Plaintiffs’ requests, it could take “several  
13 months” to complete document discovery. (*Id.* at 6.)

14 On December 3, 2024, Plaintiffs provided Defendants with notice of six depositions to  
15 take place in late December 2024 and early January 2025. (Dkt. No. 50-7 at 2.) Plaintiffs also  
16 informed Defendants they wanted to take an additional nine depositions “in the next  
17 45-60 days.” (*Id.*)

18 On December 10, 2024, Plaintiffs sent Defendants a letter reducing their list of proposed  
19 custodians from 34 individuals to 17. (Dkt. No. 50-8 at 1.) Plaintiffs did not respond to  
20 Defendants’ TAR proposal. On December 16, 2024, Defendants responded to Plaintiffs’ letter of  
21 December 10, describing additional documents Defendants had produced and noting Plaintiffs’  
22 lack of response to Defendants’ TAR proposal. (Dkt. No. 50-9 at 2–3.) Defendants stated that  
23 “[f]or whatever reason,” Plaintiffs elected to wait more than one month to respond to  
24

1 Defendants' November 8 letter "*agreeing to Plaintiffs' custodians and search terms, proposing*  
2 *the use of TAR, and requesting a conversation.*" (*Id.* at 5.) (italics in original). Defendants  
3 further stated that Plaintiffs' failure to respond to Defendants' TAR proposal made it unlikely  
4 that any additional ESI discovery could be accomplished before the discovery deadline. (*Id.*)  
5 On December 18, 2024, Plaintiffs responded to Defendants' letter of December 10, asserting  
6 Plaintiffs' delay in responding to Plaintiffs' August 23, 2024, ESI proposal was "far more  
7 inconsiderate" than any delays on Plaintiffs' part and stating they did not agree to the use of  
8 TAR. (Dkt. No. 50-10 at 2.)

9 On December 24, 2024, Plaintiffs filed the present motion to extend certain class  
10 certification deadlines. (Dkt. No. 49.)

## 11 II. LEGAL STANDARD

12 "A schedule may be modified only for good cause and with the judge's consent." Fed. R.  
13 Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the  
14 party seeking amendment." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.  
15 1992). The district court may modify the schedule "if it cannot reasonably be met despite the  
16 diligence of the party seeking the extension." *Id.* (internal citations omitted). However, "if that  
17 party was not diligent, the inquiry should end" and the motion to modify the schedule should be  
18 denied. *Id.* "Mere failure to complete discovery within the time allowed does not constitute  
19 good cause for an extension or continuance." LCR 16(b)(6).

## 20 III. DISCUSSION

21 Plaintiffs seek an extension of the class certification deadlines due to Defendants'  
22 "deficient and delinquent discovery productions" and "failure to run targeted custodial searches  
23 of relevant custodians pursuant to the ESI protocol for this case," which has left Plaintiffs  
24

1 without necessary discovery. (Dkt. No. 49 at 1.) Plaintiffs argue modification of the case  
2 schedule is necessary to allow to parties to complete negotiations concerning ESI custodians and  
3 search terms, and for Defendants to produce discovery related to Plaintiffs’ claims. (*Id.*)  
4 Plaintiffs argue discovery remains ongoing despite their diligence and that modification of the  
5 class certification deadlines is necessary so Plaintiffs will have discovery sufficient to support  
6 Plaintiffs’ forthcoming class certification motion. (*Id.* at 1–2.)

7 Plaintiffs argue they have made genuine efforts to seek discovery in an expeditious  
8 manner and engaged in good faith negotiations with opposing counsel over discovery  
9 disagreements. (*Id.* at 7.) Plaintiffs argue their inability to meet the current class certification  
10 deadlines is “solely a product of Defendants’ attempts to drag their feet through discovery and  
11 refusal to produce case-specific documents according to the ESI protocols.” (*Id.*) Plaintiffs seek  
12 to extend the class certification deadlines by approximately six months. (*Id.* at 9.)

13 Defendants argue Plaintiffs have pursued discovery at “an inexplicably slow pace” and  
14 are seeking to blame Defendants for their own lack of diligence. (Dkt. No. 52 at 1.) Defendants  
15 cite Plaintiffs’ decision to wait until December 2024 to notice or begin scheduling depositions,  
16 including for dates beyond the discovery deadline, and Plaintiffs’ repeated delays in responding  
17 to Defendants’ proposals concerning ESI discovery. (*Id.*) Defendants also note they have agreed  
18 “without qualification” to Plaintiffs’ proposed search terms and custodians. (*Id.*)

19 Here, the Court questions whether the parties have acted with sufficient diligence in  
20 pursuing discovery. It seems much of the delay each side blames the other for could have been  
21 resolved by simply picking up a telephone, calling opposing counsel, and discussing the ESI  
22 protocol rather than sending letters, and waiting for a response; apparently each side waits  
23 approximately 30 days each time to respond to written correspondence. The Court also  
24

1 questions the decision to serve depositions notices shortly before the end of the discovery period  
2 and to schedule depositions, in some cases, for dates after the discovery deadline.<sup>2</sup> The Court  
3 also notes the present motion to amend the class certification deadlines was filed on December  
4 24, 2024. (Dkt. No. 49.) The motion was noted for consideration by the Court on January 10,  
5 2025, five days before the close of discovery. The Court further notes the parties have brought  
6 several discovery disputes before the Court towards the end of the discovery period, several of  
7 which are still pending. (Dkt. Nos. 51, 59, 63, 64.) The parties should be proactive in following-  
8 up with their discovery so as not to run into conflicts with the discovery cutoff.

9 Despite this, the Court finds it appropriate to grant an extension of the class certification  
10 deadlines so the parties may complete discovery. To the extent Plaintiffs contend they need  
11 additional time to “complete negotiations” concerning ESI custodians and search terms, the  
12 evidence before the Court suggests the parties have reached agreement on these points, given  
13 that Defendants have agreed “without qualification” to Plaintiffs’ proposed search terms and  
14 custodians. The parties should be diligent in completing discovery and should already calendar  
15 any depositions the parties seek to conduct—in other words, do not wait until the last two  
16 months to reach out to the other side to schedule depositions. The parties should not expect  
17 additional extensions absent extraordinary circumstances.

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19 <sup>2</sup> Plaintiffs argue they are not at fault for failing to schedule depositions earlier because Plaintiffs  
20 have not yet received the documents requested from Defendants. (Dkt. No. 57 at 3.) Plaintiffs  
21 contend they did not begin receiving the documents produced in the *Tomczak* case from  
22 Defendants until October 2024. (*Id.*) Federal Civil Rule 26(d)(3) provides that, unless the court  
23 orders otherwise, “methods of discovery may be used in any sequence” and “discovery by one  
24 party does not require any other party to delay its discovery.” While “[i]n a majority of cases,  
interrogatory and document discovery are completed prior to depositions . . . [ ] this is certainly  
not a hard and fast rule[.]” *Hogan v. DC Comics*, Case No. 96–CV–1749, 1997 WL 570871, at  
\*6 (N.D.N.Y. Sept. 9, 1997); *Teletel, Inc. v. Tel–Tel U.S. Corp.*, Case No. 99 Civ. 4811, 2000  
WL 1335872, at \*2 (S.D.N.Y. Sept. 15, 2000) (finding plaintiff’s failure to produce its principals  
for depositions until the completion of document production to be unjustified).



**IV. ORDER**

Plaintiffs' motion to extend certain class certification deadlines (Dkt. No. 49) is GRANTED. The new deadlines shall be as follows:

Event	Current Deadline	New Deadline
Complete Discovery Relevant to Class Certification (excluding discovery regarding identity of putative class members)	January 15, 2025	July 14, 2025
Last day to file Motion for Class Certification, with expert reports, if any	February 3, 2025	August 4, 2025
Defendants to complete depositions of Plaintiffs' experts	April 3, 2025	September 30, 2025
Last day to file Opposition to Motion for Class Certification, with expert reports, if any	May 5, 2025	November 3, 2025
Plaintiffs to complete depositions of Defendants' experts, if any	July 3, 2025	December 30, 2025
Last day to file Reply to Motion for Class Certification	August 4, 2025	February 2, 2026

Dated this 22nd day of January, 2025.



David G. Estudillo  
United States District Judge